U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: JAN 0 9 2015 OFFICE: TEXAS SERVICE CENTER [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. We will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a physician. At the time he filed the petition, the petitioner was a fellow in pulmonary medicine at) and other hospitals affiliated with According to U.S. Citizenship and Immigration Services (USCIS) records, the petitioner's most recent documented employer is The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a short statement, describing the petitioner's research and his educational duties at affiliated teaching hospitals, and asserting that the labor certification process would not ensure that the petitioner can remain in the United States.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, Pub. L. 101-649, 104 Stat. 4978 (Nov. 29, 1990), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states:

> The Service [now USCIS] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dep't of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term "prospective" is included here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on August 1, 2013. An accompanying introductory statement indicated that the benefit from the petitioner's work is national in scope because of his research and teaching functions. The statement indicated that the petitioner's teaching duties have national scope because they create "a ripple effect," propagating medical

techniques throughout the field. The petitioner did not claim to have created the techniques that he has taught, and he did not show that the number of students or residents taught by one fellow is significant at a national level.

The statement indicated that the petitioner "is able to perform . . . advanced medical and diagnostic procedures that only a very small percentage of his peers [is] able to perform," and that "[o]nly the foremost members of his field have had their work presented at" the conferences where he has presented his research, but the record contains no documentary evidence to support these claims. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The introductory statement addressed the labor certification issue:

> Please note that [the petitioner] has extensive[ ]responsibilities as both a clinician and as a medical researcher. However, his contractual services encompass clinical work only. This is customary in[ ]the profession. Virtually all academic researchers who are not yet permanent residents are not reimbursed contractually for any research work that they may perform. Furthermore, since the Department of Labor does not allow for a combination of occupations when filing a labor certification, such a combination is not possible. A very significant percentage of the patients that [the petitioner] treats receive [redacted] [*sic*]. His outstanding diagnostic abilities allow her to diagnose these patients at earlier stages[ ]of their illness then [*sic*] the large majority of his colleagues would be able to. This saves the federal government a great amount of money because the need for later much more expensive and often invasive procedures is avoided. . . .
>
> [The petitioner] is very well-known for his diagnostic ability. He is also known for his ability to deal with tremendous efficiency and precision in emergency situations where there is literally no margin for error and not a minute to waste.

The petitioner submitted no evidence to support the above claims, and therefore has not met his burden of proof regarding those assertions. *See Matter of Soffici*, 22 I&N Dec. 165.

Regarding the claim that "the Department of Labor does not allow for a combination of occupations when filing a labor certification," the regulation at 20 C.F.R. § 656.17(h)(3) provides:

> If the job opportunity involves a combination of occupations, the employer must document that it has normally employed persons for that combination of occupations, and/or workers customarily perform the combination of occupations in the area of intended employment, and/or the combination job opportunity is based on a business

> necessity. Combination occupations can be documented by position descriptions and relevant payroll records, and/or letters from other employers stating their workers normally perform the combination of occupations in the area of intended employment, and/or documentation that the combination occupation arises from a business necessity.

The quoted regulation shows that "a combination of occupations" is acceptable under certain specified conditions. Furthermore, the record indicates that a combination of clinical, teaching and research duties is customary for medical school faculty members. The petitioner has not shown that the Department of Labor will not approve labor certification applications for medical school faculty positions.

Furthermore, the petitioner did not establish that his research and teaching functions would continue after he completed his temporary fellowship training. On Part 6, line 3 of Form I-140, the petitioner indicated that his duties as a physician would be to "diagnosing and treating patients for medical disorders." This information indicates that the petitioner's intended employment, once his training is complete, will consist primarily of clinical medical practice rather than teaching or research.

The petitioner's introductory statement indicated that the record includes "letters of support from independent experts nationwide . . . both from institutions at which [the petitioner] has worked and institutions at which he has not worked." Dr. attending physician in pulmonary/critical care medicine at and director of the fellowship program in that specialty, described a case that the petitioner had handled and asserted that the petitioner's "work is indispensable to the pulmonary and critical care service at " and that "[h]is prestigious research has increased his visibility in the field."

Dr. professor at described some of the specialized training that the petitioner has received, and claimed that the petitioner "is a nationally recognized pulmonologist and critical care specialist, with superior ability in the performance of a variety of emergency live [*sic*] saving diagnostic and treatment procedure [*sic*]."

Dr. , associate professor at stated: "In recognition of his status as a pulmonologist and critical care specialist at the top of his field, [the petitioner] has been given impressive roles at prominent medical institutions." The only specific example Dr. cited was the petitioner's fellowship at Dr. did not explain how fellowship training constitutes an "impressive role." Dr. also referred to the petitioner's earlier employment "as an anesthesiologist in India," but he did not identify the medical institutions or explain their prominence.

The remaining letters are from individuals at other institutions. Dr. , who holds an unspecified faculty position at , stated: "I do not have the fortune of currently working with [the petitioner]." Dr. s letter does not include a *curriculum vitae* that might indicate whether or not Dr. had previously worked or studied with the petitioner. Dr. stated that the petitioner "conducted a large-scale review of lung cancer screening. This work

is in press and will be published this summer. It is anticipated to be a great contribution to the literature on this complex topic." Dr. did not identify the publishing journal or explain how he knew of the article's acceptance for publication. The record contains no first-hand evidence, such as a copy of an acceptance letter from a publisher, to support Dr. claims. The petitioner, on his résumé, indicated that he had submitted an article to the journal but he did not claim or demonstrate that it had been accepted.

The individuals who provided the remaining two letters do not specialize in pulmonary medicine/critical care. Dr. is a staff anesthesiologist at the , while Dr. is a staff cardiologist at er. Dr. studied at during the second half of the 1990s; the petitioner studied at the same school, at the same time. Dr. asserted that the petitioner "is among the top 1% of Intensivists because of his clinical expertise in critical care echocardiography. . . . He is also teaching this new procedural technique to his colleagues and trainees." Dr. did not document the "1%" figure, or specify where the petitioner himself learned the technique. Pulmonologists do not qualify for the national interest waiver simply by training at institutions that teach critical care echocardiography. Simple exposure to advanced technology constitutes, essentially, occupational training which can be articulated on an application for a labor certification. Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *NYSDOT* at 221.

Dr. like Dr. emphasized aspects of the petitioner's specialized training. Dr. also claimed that the petitioner is "a celebrated clinician" who is "esteemed for his work in critical care medicine." The record contains no documentary evidence that the petitioner, even before completing his specialized training, has already earned such renown.

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have received consideration above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as above, evaluate the content of those letters as to whether they support the alien's eligibility. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *See id.* at 795; *see also Matter of V-K-,* 24 I&N Dec. 500, 502 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). *See also Matter of Soffici*, 22 I&N Dec. 165.

The letters considered above contain assertions regarding the importance and impact of the petitioner's work, which the record does not support. The lack of corroborating evidence diminishes the weight of the reference letters.

Several of the letters, for example, stressed the petitioner's reputation as a researcher or "physician-scientist." The petitioner did not claim to have published any papers in peer-reviewed journals (although, as noted above, he claimed to have submitted a manuscript for review). On his résumé, the petitioner claimed one oral presentation in 2006 (before he trained in pulmonary/critical care medicine), and five poster presentations in 2010-2011 (four of which were at local or regional conferences). One of the poster presentations, "[redacted]" reported the results of a "small study" involving [redacted] patients. The study indicated that, after "house staff and nurses were given dedicated education," there was a "12% Improvement . . . in average transfer time." The record offers no support for the claim that this research has earned significant attention in the petitioner's field.

The director issued a request for evidence (RFE) on September 23, 2013. The director quoted from some of the submitted letters, but found: "The information provided is vague and gives very little detail about how the petitioner's work and expertise ha[ve] made an impact [on] the field . . . as a whole."

In response, the petitioner submitted a statement claiming that he had submitted "[t]estimonials from renowned experts, who are considered the foremost leaders in their fields," which show that the petitioner's expertise and achievements "have set him apart from others and have already had a national influence." The petitioner did not establish that the individuals who provided letters "are considered the foremost leaders in their fields," and the individuals themselves did not claim to be so. The statement identified no specific example of the petitioner's claimed national impact, and we can find no such examples in the letters. The statement refers to the petitioner's "outstanding record of publications," but there is no evidence that the petitioner had any publications to his credit at the time of this statement. The statement identified no existing publications by the petitioner, instead repeating the claim that a paper by the petitioner "is to be published in the high-impact journal [redacted]." The petitioner submitted no evidence from the publisher to establish that the journal had accepted the article for publication. The record shows only that the petitioner claims to have submitted a manuscript to the journal. Unsupported assertions, such as the examples identified above, have no weight as evidence. *See Matter of Obaigbena*, 19 I&N Dec. 534; *Matter of Laureano*, 19 I&N Dec. 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. 506. The statement includes the claim that the petitioner's "heightened stature in the field" justifies the national interest waiver, but the record contains no reliable evidence of that claimed stature.

The RFE response statement included a list of six items, prefaced by the assertion: "We point to the following recognition by physician-scientists in [the petitioner's] area of medical expertise." The six listed items, however, are not instances of "recognition by physician-scientists." Rather, three of the listed items are conference presentations by the petitioner; two items are examples of medical

techniques that the petitioner has learned to perform; and the remaining item concerns the petitioner's supervisory duties over "junior and senior medical residents and medical students."

The petitioner submitted three additional letters, only one of which is from an individual with specialized training in pulmonary/critical care medicine. Dr. assistant professor at the , credited the petitioner with "original contributions . . . to the literature through his publication in prominent peer-reviewed journals," the plural word "journals" implying the existence of more than one published article. As noted above, there is no evidence that such articles existed at the time of Dr. letter, which casts doubt on every other unsupported claim of fact that appears in that letter. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The other two individuals who provided letters are not pulmonary/critical care specialists, but both of them were residents in internal medicine at -affiliated Metropolitan Hospital while the petitioner was also training there. Dr. attending physician in geriatric medicine at , stated that the petitioner "is well-regarded for his review research on '" The stated title is a variation of the title of the paper that the petitioner had submitted to As noted above, the petitioner has not shown that the article ever appeared in print, and the wording of the assertion that the petitioner "is well-regarded" for the article fails to establish who it is that regards the petitioner in this way. The assertion that an unpublished manuscript has attracted the attention of an unspecified number of unidentified physicians and/or researchers is of little probative value.

Dr. also contended that the petitioner's "research on established a standard that may be incorporated at hospitals throughout the nation to reduce the transfer time of patients from the emergency room to intensive care unit, thereby improving patient safety and quality of care." The assertion that the "standard . . . may be incorporated at hospitals throughout the nation" amounts to speculation. The petitioner submitted no evidence that hospitals had, in fact, instituted any standard put forth in the petitioner's poster presentation.

Dr. a nephrologist for asserted that the petitioner "is one of only a handful of critical care physicians with keen knowledge in advanced critical care echocardiography and Neurocritical care," and "is distinguished from his peers for his expertise in performing endobronchial ultrasound guided biopsy of lymph nodes." Because Congress established no blanket waiver for physicians based on specific procedures that they have mastered, claims about the number of physicians who know those procedures would have little weight in this proceeding even if the petitioner had supported those claims (which is not the case here).

The director denied the petition on February 19, 2014. The director acknowledged the intrinsic merit of the petitioner's medical specialty, but found that the petitioner had not established that the

benefit from the petitioner's future work will be national in scope. The director found that "[t]he evidence submitted did not establish that the petitioner has made an impact on the field."

On appeal, the petitioner submitted a statement indicating that the benefit from his work is national in scope, because his article, "under peer-review for publication in " proposed a new modality which will save "approximately 12,000 lives per year if implemented." Medical research produces benefits that are national in scope, but the petitioner has not shown that his research activities will continue after the completion of his fellowship training. The petitioner did not submit any evidence to show that his proposed modality has, in fact, been implemented anywhere. The statement on appeal, in March 2014, that the petitioner's article is still "under peer review" contradicts Dr. earlier claim, made in July , that the article "is in press and will be published this summer."

Furthermore, the petitioner has not established any past record of influence on his field, or even a record of publication. Therefore, the record provides no basis for speculation about the possible future impact of an article which had not yet been published or, evidently, accepted for publication.

The appellate statement quotes a passage that had previously appeared in Dr. letter, indicating that one of the petitioner's poster presentations "established a standard that may be incorporated at hospitals throughout the nation." The establishment of a national standard would constitute influence on the field, but the petitioner has not shown adoption of any such standard. The poster presentation, self-described as a "small study," indicated that "[a] target time of 4 hours or less transfer time was set." After the "house staff and nurses were given dedicated education," only six out of 36 patients were transferred within the four-hour target time. Formatting errors make it difficult to draw further conclusions from the copy of the poster presentation in the record. For instance, "Table 1: Tranfer [*sic*] time before education" contains the same data as "Table 2: Transfer time after education," reporting on the second group of 36 patients rather than the first group of 25 patients.

The appellate statement includes the observation that, if a potential employer were to seek labor certification on the petitioner's behalf, "[t]he Labor Certification process [would] be halted if a U.S. worker with the minimal qualifications for the position is found . . . and it would deprive his employer of his services" even though the petitioner "possesses qualifications above the minimum." This observation does not establish that it is in the national interest to waive the labor certification requirement. The statutory job offer requirement is not limited to minimally qualified workers. Rather, aliens of exceptional ability, defined at 8 C.F.R. § 204.5(k)(2) as "a degree of expertise significantly above that ordinarily encountered," are statutorily subject to the job offer requirement at section 203(b)(2)(A) of the Act. Thus, it cannot suffice to claim that the petitioner "possesses qualifications above the minimum."

The appellate statement indicates that the petitioner "is also an educator at the and its affiliated teaching hospitals," and that the students whom the petitioner instructs "establish their practice[s] throughout the country," thereby lending the petitioner's work national scope. The petitioner has not shown that the number of trainees whom he teaches is significant at a

national level. The subsequent dispersal of the former students dilutes the impact which was formerly concentrated at teaching hospitals. Furthermore, a fellowship is not a permanent position, and therefore the duties of a fellowship cannot form the basis for permanent immigration benefits. The petitioner has not established that he intends to continue teaching, or that any medical school intends to employ him as an instructor, after his short-term fellowship is complete.

The petitioner has not established a past record of achievement at a level that would justify a waiver of the job offer requirement. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that his influence be national in scope. *NYSDOT*, 22 I&N Dec. at 217, n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219, n.6 (the alien must have "a past history of demonstrable achievement with some degree of influence on the field as a whole").

As is clear from the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

We will dismiss the appeal for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.